

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**

UNITED STATES OF AMERICA

v.

AARON RUBY

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File No. 1:06-cr-40-2

ORDER

The Magistrate Judge's Report and Recommendation was filed February 2, 2010. (Doc. 103.) After de novo review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED.¹ See 28 U.S.C. § 636(b)(1). Aaron Ruby's petition for nunc pro tunc consideration (Doc. 97) and motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Doc. 99) is DENIED and this matter is DISMISSED.

Pursuant to Fed. R. App. P. 22(b), the Court DENIES petitioner a certificate of appealability ("COA") because the petitioner failed to make a substantial showing of a denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). The Court rejects the petition on its merits because the defendant has failed to demonstrate that reasonable jurists would find the Court's "assessment of the constitutional claims debatable or wrong." See Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 1603-04 (2000).

Further, because the petition is also dismissed on procedural grounds, the petitioner cannot be issued a COA due to his failure to demonstrate that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a

¹ The Court notes an apparent typographical error on page 5, line 7, where it states defendant's surrender date to the Bureau of Prisons was July 7, 2007; in actuality it was July 17, 2007.

constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Id..

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 31st day of March, 2010.

/s/ J. Garvan Murtha

Honorable J. Garvan Murtha
Senior United States District Judge